

**ST 00-3**

**Tax Type: Sales Tax**

**Issue: Reasonable Cause on Application of Penalties**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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<b>DEPARTMENT OF REVENUE</b>	)	<b>99 ST</b>
<b>STATE OF ILLINOIS</b>	)	
	) NOA:	
v.	)	
	)	
<b>“ABC CORPORATION”,</b>	)	
	)	
Taxpayer	)	
	)	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Mark Dyckman, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue. “ABC Corporation appeared pro se.

**Synopsis:**

This matter comes on for hearing pursuant to a timely protest by “ABC Corporation” to Notices of Assessments (hereinafter “NOA”) issued by the Illinois Department of Revenue (hereinafter the “Department”). The notices pertained to various tax payments, and late filing and/or late payment penalties for the months of March 1998, June 1998, August 1998, September 1998, October 1998 and November 1998 along with statutory interest accrued to the date of the NOA’s.

Appearing at hearing for “ABC” were Mr. “John Doe”, its president (hereinafter “Doe”) and Ms. “Jane Hathaway”, “ABC’s” controller (hereinafter “Hathaway”), with “Hathaway” testifying for taxpayer.

The issue at hearing is whether the taxpayer is entitled to the abatement of late filing and/or payment penalties, disallowed discounts and corresponding interest based upon reasonable cause. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support of this recommendation, I make the following findings of fact and conclusions of law:

**Findings of Fact:**

1. The Department issued the following NOA's to taxpayer regarding its Retailers' Occupation Tax Returns, which were due to be filed on a quarterly monthly basis:

7/6/98 SB 9800000000000 for late payment for March 1998

10/13/98 SB 9800000000000 for late filing and late payment  
for June, 1998

10/26/98 SA 9800000000000 for late payment for August  
1998

11/23/98 SA 9800000000000 for late payment for September  
1998

12/10/98 SB 9800000000000 for tax due for September 1998

12/16/98 SB 9800000000000 for tax due and a late payment  
penalty for October 1998

1/19/99 SB 9800000000000 for tax due and a late payment  
penalty for November 1998

Department Gr. Exs. No. 1, 2

2. Although taxpayer filed its June 1998 return by the due date of July 20, 1998, it was unsigned and therefore, could not be processed. The Department notified taxpayer of this situation by notice sent August, 1998, wherein taxpayer was allowed thirty days to sign and resubmit the return before statutory penalties applied. Department Ex. No. 3 Taxpayer did not sign and resubmit the return until after February 1999. Tr. p. 10
3. “Hathaway” became taxpayer’s controller in February 1999. Tr. p. 12
4. Taxpayer acknowledges that its returns for March, June, August, September, October and November, 1998 were filed or paid late. Tr. pp. 13, 19-20
5. The Department issued a credit memorandum to taxpayer on August 17, 1998 for \$3,288.57. Department Ex. No. 4
6. On March 12, 1999, the Department, pursuant to taxpayer’s request, applied the credit memorandum to the September 1998, October 1998 and November 1998 assessments. Department Ex. No. 4

**Conclusions of Law:**

“ABC” was required to advise the Department of its Retailers’ Occupation Tax liability to the Department, with a return filed by the 20<sup>th</sup> day of the month following the month the tax was due, with the payments for the month being made quarter monthly within the month that the tax was due. 35 ILCS 120/3 Failure to do so caused taxpayer to incur various penalties pursuant to the Uniform Penalty and Interest Act, 35 ILCS 735/3-1 *et seq.* (hereinafter the “UPIA”), specifically sections 3-3 (penalty for failure to file or pay) and 3-2 (interest).

In this case, a late payment penalty and corresponding interest were assessed against taxpayer's March 1998 return. On the face of the NOA, the Department states that the assessment is a result of a late filed amended return. Taxpayer does not disagree that the amended return was untimely. In June, taxpayer's return was not signed, therefore, making it unprocessable. Although warned of this, taxpayer concedes that it did not correct the problem until after February 1999, thus incurring a late filing penalty. In August, October and November, several of taxpayer's quarter monthly payments were late, causing the disallowance of timely payment discounts taken by "ABC" and the assessment of late payment penalties. All of these problems were set forth on the back of the first page of each NOA issued. Apparently, however, the person responsible for the filing and the payment of the ROT preceding "Hathaway" either ignored these explanations or did not bother to read beyond the front of each notice sent. Tr. pp. 14-15

In addition to assessing late filing and/or payment penalties, the Department was using overpayments made each month by taxpayer to satisfy some of these penalties. This was detailed on the second page of each NOA that showed the Department's calculation of overpayment differing from taxpayer's. At the same time, however, the taxpayer was using the full amount of overpayment it claimed in each prior month to offset current month taxes. This resulted in underpayments and tax due. Tr. p. 14

It was not until "Hathaway" took control of the burgeoning problem that the taxpayer signed the June return and paid its taxes and penalties. However, by that time, significant penalties and interest had accrued.

From the evidence of record, there is no question that the penalties applied in this cause resulted from taxpayer's own failure to timely make its quarter monthly ROT

payments and its failure to read the NOA's sent to it by the Department explaining the problems accruing on the account. Because these failures are of taxpayer's own creation, I cannot recommend that the penalties be abated.

Taxpayer questions why its credit in excess of \$3000, acknowledged by the Department on August 17, 1998, was not sooner applied to tax deficiencies and penalties prior to March, 1999, when this \$3288.57 was applied to liabilities arising in September, October and November, 1998. Department Ex. No. 4 Section 6 of the ROTA provides that the Department "may first apply the amount thereof [of the credit memorandum] against any tax or penalty or interest due or to become due under this Act... ." 35 ILCS 120/6 Pursuant to this provision, Department regulation states, *inter alia*, that should any part of a credit be applied to existing liabilities, and if the credit amount exceeds an unpaid liability, including penalties and interest, a credit memorandum shall issue and be delivered to the person entitled to the credit (86 Ill. Admin. Code, ch. I, sec. 130.1501 (d)(4)) unless a proceeding to establish any unpaid liability is pending, and, if so, the credit memorandum can be held by the Department in order to satisfy any possible liability resulting from that proceeding. *Id.* at 130.1501 (d)(5) Both the ROTA and the regulation provide that a taxpayer may assign its credit memorandum to another taxpayer upon written notification to the Department, at which time, the Department shall issue the memorandum as directed after applying amounts to outstanding liabilities. 35 ILCS 120/6; 86 Ill. Admin. Code, ch. I, sec. 130.1505

When the Department issued the credit memorandum in August 1998, there were no assessments outstanding against taxpayer although the Department had advised the taxpayer that its June return could not be processed and that taxpayer had 30 days to

provide the Department with a processable return. Department Ex. No. 3 From March until September, any tax, late penalties and interest accruing were eliminated by the Department by corrections made to taxpayer's returns including the application of current overpayments to past due liabilities.

There is nothing in the law that says that the Department cannot correct taxpayer's returns in this manner as opposed to applying any outstanding credit memorandum. It was only in the December NOA's referring to taxpayer's September and October liabilities that balances appear, since there were no overpayments left to apply. Also, the January 1999 NOA, concerning the November liability, shows a balance as a result of there no longer being overpayments to apply.

It was not until March 1999 that the taxpayer advised the Department to apply its credit memorandum to its outstanding liabilities. Pursuant to that direction, in March 1999, the Department applied \$3,288.57 to taxpayer's September, October and November tax, penalty and interest liabilities.

At hearing, taxpayer contends that had the Department applied its outstanding credit memorandum sooner, its monthly overpayments would not have been used to pay off previous month's liabilities for late filings and payments. Therefore, taxpayer contends, the Department erred and this error establishes a reasonable cause for waiving penalties. This is an interesting argument, however, in light of the totality of the facts in this cause, this argument is flawed.

First, I note that there is nothing in the law or regulation that mandates that the Department use a credit memorandum to offset liabilities as they accrue. Secondly, until Ms. "Hathaway" began employment with it, this taxpayer consistently ignored the

Department's notices by either failing to read both the backside of page one and page two, or by simply not asking for any explanations of those notices. The notices clearly state the problem(s) with particular returns, show where the Department's corrected figures differ from taxpayer's own, state that any credit applied came from current credit balances in taxpayer's account and provide that further explanation of the credit will be found on the taxpayer's next SOA-1, Statement of Account. See NOA's, Department Gr. Ex. No. 2; Department Ex. No. 4 (SOA-1 Statement of Account, March 20, 1999, indicating that previous statement date February 20, 1999)<sup>1</sup>

The UPIA provides that penalties can be abated upon a showing of reasonable cause. 35 **ILCS 735/3-8** Department regulation states that reasonable cause is to be determined on a case by case basis taking into account all of the facts and circumstances. 86 Ill Admin. Code, ch. I, sec. 700.400(b). This provision indicates that it must be determined to what extent the taxpayer made a good faith effort to determine the correct tax liability and subsection (c) provides that a taxpayer is considered to have made a good faith effort if it uses ordinary business care and prudence.

Prior to Ms. "Hathaway's" employment, I cannot conclude that taxpayer used ordinary business care and prudence with regard to its quarter monthly filings during the periods at issue. Not only were filings and payments late, but taxpayer simply did not pay attention to the Department's mailings wherein explanations of its account were given. As a result of this lack of attention, taxpayer's penalties with corresponding interest accrued to a considerable sum.

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<sup>1</sup> This was the only Statement of Account admitted into evidence. However, given the language on each of the NOA's in evidence referencing forthcoming Statements and the fact that taxpayer received a Statement in February as well as in March, it is not unreasonable to conclude that taxpayer received other Statements throughout this period explaining the Department's actions.

**WHEREFORE**, for the reasons stated above, it is my recommendation that the penalties at issue not be abated.

1/6/00

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Mimi Brin  
Administrative Law Judge